UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUSTEES OF THE NORTHEAST CARPENTERS HEALTH, PENSION, ANNUITY, APPRENTICESHIP, and LABOR MANAGEMENT COOPERATION FUNDS, Plaintiffs, -against- ENERGY SMART INSULATION, INC. and A TO Z COATINGS, INC., Defendants.	No. 16 Civ. ____________ **COMPLAINT**

Plaintiffs, by and through their attorneys, Virginia & Ambinder, LLP, as and for their Complaint, respectfully allege as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to sections 502(a)(3) and 515 of the Employee Retirement Income Security Act, as amended, 29 U.S.C. §§ 1132(a)(3), 1145 ("ERISA"), and section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 ("LMRA"), and other applicable law, to collect delinquent employer contributions to a group of employee benefit plans, and for related relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367, and 29 U.S.C. §§ 185 and 1132(e)(1).

3. Venue is proper in this Court pursuant to 29 U.S.C. § 1132(e)(2) because the Funds (as defined below) are administered in this district.

THE PARTIES

4. Plaintiffs Trustees of the Northeast Carpenters Health, Pension, Annuity, and Apprenticeship Funds ("ERISA Funds") are employer and employee trustees of multiemployer labor-management trust funds organized and operated in accordance with ERISA. The Trustees are fiduciaries of the ERISA Funds within the meaning of section 3(21) of ERISA, 29 U.S.C. § 1002(21). The Funds maintain their principal place of business at 10 Corporate Park Drive, Suite A, Hopewell Junction, New York 12533.

5. Plaintiffs Trustees of the Northeast Carpenters Labor Management Cooperation Fund ("Labor Management Fund," and together with the ERISA Funds, the "Funds") are employer and employee trustees of a labor management cooperation committee established under section 302(c)(9) of the LMRA, 29 U.S.C. § 186(d)(9). The Labor Management Fund maintains its principal place of business at 10 Corporate Park Drive, Suite A, Hopewell Junction, New York 12533.

6. Upon information and belief, Defendant Energy Smart Insulation Inc. ("Energy Smart") is a Pennsylvania corporation authorized to do business within the State of New York having an address at 1513 E. Woodlawn Street, Allentown, PA 18109. At all relevant times, Energy Smart is and was an employer within the meaning of section 3(5) of ERISA, 29 U.S.C. § 1002(5), and is and was an employer in an industry affecting commerce within the meaning of section 501 of the LMRA, 29 U.S.C. § 142. Energy Smart maintains a place of business at 1513 E. Woodlawn Street, Allentown, PA 18109.

7. Upon information and belief, Defendant A to Z Coatings, Inc. ("A to Z") is a Pennsylvania corporation authorized to do business in the State of New York having an address at 3218 Pittston Avenue, Scranton, PA 18505. At all relevant times, A to Z is and was an employer

within the meaning of section 3(5) of ERISA, 29 U.S.C. § 1002(5), and is and was an employer in an industry affecting commerce within the meaning of section 501 of the LMRA, 29 U.S.C. § 142. A to Z maintains a place of business at 3218 Pittston Avenue, Scranton, PA 18505.

BACKGROUND

The Collective Bargaining Agreement

8. The Northeast Regional Council of Carpenters ("Union") is a labor organization that represents employees in an industry affecting commerce within the meaning of section 501 of the LMRA, 29 U.S.C. § 142, and is or at relevant times was the certified bargaining representative for certain employees of Energy Smart.

9. At relevant times, Energy Smart was a party to, or manifested an intention to be bound by a collective bargaining agreement (the "CBA") with the Union.

10. The CBA required Energy Smart, *inter alia*, to make specified hourly contributions to the Funds in connection with all work performed in the trade and geographical jurisdiction of the Union ("Covered Work").

11. Pursuant to the CBA and the documents and instruments governing the Funds, an employer is liable for all delinquent contributions, plus interest thereon at the rate of 9% per annum compounded, liquidated damages of 20% of the delinquent contributions, audit costs, and all reasonable attorneys' fees, expenses, and costs incurred by the Funds in collecting the delinquency.

12. Section 301 of the LMRA, 29 U.S.C. § 185, authorizes this Court to enforce the CBA. In addition, section 515 of ERISA provides that "[e]very employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such

contributions in accordance with the terms and conditions of such plan or such agreement." 29 U.S.C. § 1145.

The Funds Audit

13. The CBA further required Energy Smart, *inter alia*, to furnish its books and payroll records when requested by the Funds for the purpose of conducting an audit to ensure compliance with required benefit fund contributions.

14. Pursuant to the CBA, the Funds conducted an audit of Energy Smart covering December 11, 2012 through April 27, 2014. The auditor determined that Energy Smart failed to report and make contributions in the principal amount of $11,412.90.

15. Pursuant to the CBA and sections 502(g)(2) and 515 of ERISA, 29 U.S.C. § 1132(g)(2) and 1145, Energy Smart is liable to the Funds for contributions in connection with all Northeast regional Covered Work performed by its employees from December 11, 2012 through April 27, 2014, in the amount of $11,412.90, plus interest thereon at the rate of 9% per annum compounded, liquidated damages of 20% of the delinquent contributions, audit costs, and all reasonable attorneys' fees, expenses, and costs incurred by Plaintiffs in prosecuting this suit.

Alter Ego, Successor, and Single Employer Allegations

16. At relevant times, Defendants Energy Smart and A to Z were alter egos of each other and had substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership.

17. At relevant times, notwithstanding any nominal separation between them, Defendants also constituted a single integrated enterprise and had interrelated and interdependent operations, common management, centralized control of labor functions, common and/or family ownership, and shared facilities and equipment.

18. At relevant times, Energy Smart was owned and operated by Gerald Robb.

19. At relevant times, A to Z was owned and operated by Gerald Robb.

20. Upon information and belief, at relevant times, Defendants operated out of the same premises: 3218 Pittston Avenue, Scranton, PA 18505.

21. Upon information and belief, each of the Defendants performs commercial and residential insulation work.

22. Upon information and belief, at relevant times A to Z used the same personnel, equipment, vehicles, and facilities used by Energy Smart's workers.

FIRST CLAIM FOR RELIEF

23. Plaintiffs repeat the allegations set forth in paragraphs 1 through 22 above and incorporate them herein by reference.

24. At all relevant times, Energy Smart was a party to, or manifested an intention to be bound by the CBA.

25. At relevant times, Defendants were alter egos and/or successors of each other and/or constituted a single employer and had substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership.

26. By virtue of their status as alter egos, successors, and/or predecessors of each other and/or as a single employer, Defendants are and at all relevant times have been bound by the CBA and are jointly and severally liable for each other's unpaid contributions to the Funds.

27. Upon information and belief, Defendants dispute Plaintiffs' contention that Defendants are alter ego, successors, and/or a single employer.

28. An actual controversy has arisen and now exists between the parties with respect to the status of Defendants as alter egos, successors, and/or a single employer.

29. Accordingly, the Funds seek a judicial determination, pursuant to 28 U.S.C. §§2201 and 2202, that Defendants are alter egos or successors, and/or constitute a single employer, that Defendants have at all times been bound by the CBA, and that Defendants are jointly and severally liable for each other's unpaid contributions under the CBA.

SECOND CLAIM FOR RELIEF

30. Plaintiffs repeat the allegations set forth in paragraphs 1 through 29 above and incorporate them herein by reference.

31. The CBA required Energy Smart, *inter alia*, to make specified hourly contributions to the Funds and related entities on behalf of which they act as collection agents in connection with all Covered Work performed by Energy Smart.

32. The CBA required Energy Smart to furnish its books and payroll records when requested by the Funds for the purpose of conducting an audit to ensure compliance with required benefit fund contributions.

33. Pursuant to the CBA, the Funds conducted an audit of Energy Smart covering the period December 11, 2012 through April 27, 2014. The auditor determined that Energy Smart failed to report and make contributions in the amount of $11,412.90.

34. No part of such contributions have been paid to the Funds, although payment has been duly demanded.

35. At relevant times, Defendants were alter egos and/or successors of each other and/or constituted a single employer and had substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership.

36. By virtue of their status as alter egos, successors, and/or predecessors of each other and/or as a single employer, Defendants are and at all relevant times have been bound by the CBA and are jointly and severally liable for each other's unpaid contributions to the Funds.

37. Accordingly, pursuant to sections 502(g)(2) and 515 of ERISA, 29 U.S.C. § 1132(g)(2) and 1145, the CBA, and the documents and instruments governing the Funds, Defendants are jointly and severally liable to the Funds for contributions in connection with Covered Work performed by Energy Smart in the amount of $11,412.90, plus compound interest thereon at the rate of 9% per annum, liquidated damages of 20% of the delinquent contributions, audit costs, and all reasonable attorneys' fees, expenses, and costs incurred by Plaintiffs in prosecuting this suit.

THIRD CLAIM FOR RELIEF

38. Plaintiffs repeat the allegations set forth in paragraphs 1 through 37 above and incorporate them herein by reference.

39. At relevant times, Energy Smart was a party to, or manifested an intention to be bound by the CBA.

40. The CBA required Energy Smart, *inter alia*, to make specified hourly contributions to the Funds and related entities on behalf of which they act as collection agents in connection with all Covered Work performed by Energy Smart.

41. The CBA required Energy Smart to furnish its books and payroll records when requested by the Funds for the purpose of conducting an audit to ensure compliance with required benefit fund contributions.

42. At relevant times, Defendants were alter egos and/or successors of each other and/or constituted a single employer and had substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership.

43. By virtue of their status as alter egos, successors, and/or predecessors of each other and/or as a single employer, Defendants are and have at all relevant times been bound by the CBA and are jointly and severally liable for each other's unpaid contributions to the Funds.

44. Accordingly, pursuant to §§ 502 and 515 of ERISA, 29 U.S.C. § 1132 and 1145, the CBA, and the documents and instruments governing the Funds, Plaintiffs are entitled to an order directing Defendants to submit to an audit of Defendants' books and records covering the period December 2012 through the present and to pay all delinquent benefit contributions revealed by such audit, plus interest, liquidated damages, reasonable attorneys' fees, audit fees, and other costs incurred during the audit and collection procedures.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) On Plaintiffs' First Claim for Relief, declaring that Defendants are alter egos or successors, and/or constitute a single employer, that Defendants have all times been bound by the CBA, and that Defendants are jointly and severally liable for each other's unpaid contributions to the Funds for the period December 11, 2012 through the present;

(2) On Plaintiffs' Second Claim for Relief, granting judgment to the Funds against Defendants, jointly and severally, for delinquent benefit contributions in connection with Covered Work performed by Energy Smart's employees from December 11, 2012 through April 27, 2014, in the amount of $11,412.90, plus

interest, liquidated damages, audit costs, and all reasonable attorneys' fees, expenses, and costs incurred by the Funds in prosecuting this suit;

(3) On Plaintiffs' Third Claim for Relief, directing Defendants to submit to an audit of Defendants' books and records covering the period December 2012 through the present and to pay all delinquent contributions revealed by such audit, plus interest, liquidated damages, audit fees, reasonable attorneys' fees, and other costs incurred during the audit and collections procedures; and

(4) Awarding Plaintiffs such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 9, 2016

Respectfully submitted,

VIRGINIA & AMBINDER, LLP

By: /s/

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